

(2) this section and regulations prescribed under this section may not be carried out in a way that precludes or curtails the existing ability of the Administrator to provide for—

(A) competition in producing items to be delivered under a contract under this section; or

(B) ending a prime contract when performance is deficient with respect to cost, quality, or schedule.

(d) **CONTRACT PROVISIONS.**—(1) A contract under this section may—

(A) be used for the advance procurement of components, parts, and material necessary to manufacture equipment to be used in the national airspace system;

(B) provide that performance under the contract after the first year is subject to amounts being appropriated; and

(C) contain a negotiated priced option for varying the number of end items to be procured over the period of the contract.

(2) If feasible and practicable, an advance procurement contract may be made to achieve economic-lot purchases and more efficient production rates.

(e) **CANCELLATION PAYMENT AND NOTICE OF CANCELLATION CEILING.**—(1) If a contract under this section provides that performance is subject to an appropriation being made, it also may provide for a cancellation payment to be made to the contractor if the appropriation is not made.

(2) Before awarding a contract under this section containing a cancellation ceiling of more than \$100,000,000, the Administrator shall give written notice of the proposed contract and cancellation ceiling to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. The contract may not be awarded until the end of the 30-day period beginning on the date of the notice.

(f) **ENDING CONTRACTS.**—A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from—

(1) an appropriation originally available for carrying out the contract;

(2) an appropriation currently available for procuring the type of property concerned and not otherwise obligated; or

(3) amounts appropriated for payments to end the contract.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1108; Pub. L. 104–106, div. E, title LVI, §5606, Feb. 10, 1996, 110 Stat. 700; Pub. L. 104–287, §5(9), Oct. 11, 1996, 110 Stat. 3389.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40112(a)	49 App.:1344(f)(1) (words before 4th comma), (6), (7) (1st sentence).	Aug. 23, 1958, Pub. L. 85–726, §303(f), 72 Stat. 747; May 21, 1970, Pub. L. 91–258, §51(a)(1), 84 Stat. 234; July 12, 1976, Pub. L. 94–353, §16, 90 Stat. 882; Oct. 19, 1980, Pub. L. 96–470, §112(e), 94 Stat. 2240; Jan. 12, 1983, Pub. L. 97–449, §7(b), 96 Stat. 2444; re-stated Nov. 5, 1990, Pub. L. 101–508, §9118(a), 104 Stat. 1388–367.
40112(b)	49 App.:1344(f)(1) (words after 4th comma).	
40112(c)	49 App.:1344(f)(2).	
40112(d)	49 App.:1344(f)(4) (words before 3d comma).	
40112(d) (1)(A).	49 App.:1344(f)(7) (last sentence words before “and (if”)”).	
40112(d) (1)(B).	49 App.:1344(f)(8).	
40112(d) (1)(C).	49 App.:1344(f)(4) (words after 3d comma).	
40112(d)(2) ..	49 App.:1344(f)(7) (last sentence words after “of funds”)”).	
40112(e)(1) ..	49 App.:1344(f)(3).	
40112(e)(2) ..	49 App.:1344(f)(5).	
40112(f)		

In this section, the word “Administrator” in section 303(f) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 747) is retained on authority of 49:106(g).

In subsection (a), the reference in 49 App.:1344(f)(7) to a contract for the purchase of services is omitted as surplus because 49 App.:1344(f)(1) states that the subsection is concerned only with contracts for the purchase of property.

In subsection (b)(5), the word “savings” is substituted for “cost avoidance” for clarity.

In subsection (c), before clause (1), the word “both” is omitted as surplus. In clause (1)(A), the words “in such a manner as” and “companies that are” are omitted as surplus. In clause (1)(B), the words “accruing on” are substituted for “under” for clarity. The words “sub-contractor” and “contract” are substituted for “sub-contract” and “contractor”, respectively, to correct errors in the source provisions being restated.

In subsection (d)(1)(B), the words “after the first year” are substituted for “during the second and subsequent years of the contract” to eliminate unnecessary words.

In subsection (e)(2), the words “a clause setting forth” are omitted as surplus.

In subsection (f), the words “canceled or” and “cancellation or” are omitted as being included in “ended” and “ending”, respectively.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106 struck out “or a contract to purchase property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies” after “improvement to real property”.

Subsec. (e)(2). Pub. L. 104–287 substituted “Transportation and Infrastructure” for “Public Works and Transportation”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

§ 40113. Administrative

(a) **GENERAL AUTHORITY.**—The Secretary of Transportation (or the Under Secretary of Transportation for Security with respect to se-

curity duties and powers designated to be carried out by the Under Secretary or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may take action the Secretary, Under Secretary, or Administrator, as appropriate, considers necessary to carry out this part, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

(b) **HAZARDOUS MATERIAL.**—In carrying out this part, the Secretary has the same authority to regulate the transportation of hazardous material by air that the Secretary has under section 5103 of this title. However, this subsection does not prohibit or regulate the transportation of a firearm (as defined in section 232 of title 18) or ammunition for a firearm, when transported by an individual for personal use.

(c) **GOVERNMENTAL ASSISTANCE.**—The Secretary (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may use the assistance of the Administrator of the National Aeronautics and Space Administration and any research or technical department, agency, or instrumentality of the United States Government on matters related to aircraft fuel and oil, and to the design, material, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities. Each department, agency, and instrumentality may conduct scientific and technical research, investigations, and tests necessary to assist the Secretary or Administrator of the Federal Aviation Administration in carrying out this part. This part does not authorize duplicating laboratory research activities of a department, agency, or instrumentality.

(d) **INDEMNIFICATION.**—The Under Secretary of Transportation for Security or the Administrator of the Federal Aviation Administration may indemnify an officer or employee of the Transportation Security Administration or Federal Aviation Administration, as the case may be, against a claim or judgment arising out of an act that the Under Secretary or Administrator, as the case may be, decides was committed within the scope of the official duties of the officer or employee.

(e) **ASSISTANCE TO FOREIGN AVIATION AUTHORITIES.**—

(1) **SAFETY-RELATED TRAINING AND OPERATIONAL SERVICES.**—The Administrator may provide safety-related training and operational services to foreign aviation authorities with or without reimbursement, if the Administrator determines that providing such services promotes aviation safety. To the extent practicable, air travel reimbursed under this subsection shall be conducted on United States air carriers.

(2) **REIMBURSEMENT SOUGHT.**—The Administrator shall actively seek reimbursement for services provided under this subsection from foreign aviation authorities capable of providing such reimbursement.

(3) **CREDITING APPROPRIATIONS.**—Funds received by the Administrator pursuant to this

section shall be credited to the appropriation from which the expenses were incurred in providing such services.

(4) **REPORTING.**—Not later than December 31, 1995, and annually thereafter, the Administrator shall transmit to Congress a list of the foreign aviation authorities to which the Administrator provided services under this subsection in the preceding fiscal year. Such list shall specify the dollar value of such services and any reimbursement received for such services.

(f) **APPLICATION OF CERTAIN REGULATIONS TO ALASKA.**—In amending title 14, Code of Federal Regulations, in a manner affecting intrastate aviation in Alaska, the Administrator of the Federal Aviation Administration shall consider the extent to which Alaska is not served by transportation modes other than aviation, and shall establish such regulatory distinctions as the Administrator considers appropriate.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1110; Pub. L. 103-305, title II, §202, Aug. 23, 1994, 108 Stat. 1582; Pub. L. 106-181, title I, §156(a), Apr. 5, 2000, 114 Stat. 89; Pub. L. 107-71, title I, §140(c), Nov. 19, 2001, 115 Stat. 641.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40113(a)	49 App.:1324(a). 49 App.:1354(a). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1).	Aug. 23, 1958, Pub. L. 85-726, §§204(a), 313(a), 72 Stat. 743, 752. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(e), 98 Stat. 1704. Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97-449, §7(b), 96 Stat. 2444.
40113(b)	49 App.:1472(h)(1), (3).	Aug. 23, 1958, Pub. L. 85-726, §902(h)(1), (3), 72 Stat. 785; restated Jan. 3, 1975, Pub. L. 93-633, §113(c), 88 Stat. 2162, 2163.
40113(c)	49 App.:1505.	Aug. 23, 1958, Pub. L. 85-726, §1105, 72 Stat. 798; Oct. 15, 1962, Pub. L. 87-810, §3, 76 Stat. 921.
40113(d)	49 App.:1655(c)(1). 49 App.:1354(e).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §313(e); added Dec. 30, 1987, Pub. L. 100-223, §205, 101 Stat. 1521.

In subsections (a), (c), and (d), the word “Administrator” in sections 313(a) and (e) and 1105 of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 752, 798) is retained on authority of 49:106(g).

Subsection (a) is substituted for 49 App.:1324(a) and 1354(a) to eliminate unnecessary words. The word “standards” is added for consistency.

In subsection (b), the words “his responsibilities under” and “safe” are omitted as surplus.

In subsection (c), the words “department, agency, and instrumentality” are substituted for “agency” and “governmental agency” for consistency in the revised title and with other titles of the United States Code. The text of 49 App.:1505 (2d, 3d sentences) is omitted as superseded by 49 App.:1903(b), restated in sections 1105, 1110, and 1111 of the revised title. The word “existing” is omitted as surplus.

In subsection (d), the text of 49 App.:1354(e) (last sentence) is omitted because of 49:322(a).

AMENDMENTS

2001—Subsec. (a). Pub. L. 107-71, §140(c)(1), inserted “the Under Secretary of Transportation for Security

with respect to security duties and powers designated to be carried out by the Under Secretary or” before “the Administrator of the Federal Aviation Administration” and substituted “, Under Secretary, or Administrator” for “or Administrator”.

Subsec. (d). Pub. L. 107-71, §140(c)(2), inserted “Under Secretary of Transportation for Security or the” after “The” and substituted “employee of the Transportation Security Administration or Federal Aviation Administration, as the case may be,” for “employee of the Administration” and “the Under Secretary or Administrator, as the case may be, decides” for “the Administrator decides”.

2000—Subsec. (f). Pub. L. 106-181 added subsec. (f).

1994—Subsec. (e). Pub. L. 103-305 added subsec. (e).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ADMINISTRATIVE SERVICES FRANCHISE FUND

Pub. L. 104-205, title I, Sept. 30, 1996, 110 Stat. 2957, provided in part that: “There is hereby established in the Treasury a fund, to be available without fiscal year limitation, for the costs of capitalizing and operating such administrative services as the FAA Administrator determines may be performed more advantageously as centralized services, including accounting, international training, payroll, travel, duplicating, multimedia and information technology services: *Provided*, That any inventories, equipment, and other assets pertaining to the services to be provided by such fund, either on hand or on order, less the related liabilities or unpaid obligations, and any appropriations made prior to the current year for the purpose of providing capital shall be used to capitalize such fund: *Provided further*, That such fund shall be paid in advance from funds available to the FAA and other Federal agencies for which such centralized services are performed, at rates which will return in full all expenses of operation, including accrued leave, depreciation of fund plant and equipment, amortization of Automated Data Processing (ADP) software and systems (either required or donated), and an amount necessary to maintain a reasonable operating reserve, as determined by the FAA Administrator: *Provided further*, That such fund shall provide services on a competitive basis: *Provided further*, That an amount not to exceed four percent of the total annual income to such fund may be retained in the fund for fiscal year 1997 and each year thereafter, to remain available until expended, to be used for the acquisition of capital equipment and for the improvement and implementation of FAA financial management, ADP, and support systems: *Provided further*, That no later than thirty days after the end of each fiscal year, amounts in excess of this reserve limitation shall be transferred to miscellaneous receipts in the Treasury.”

AIRCRAFT PURCHASE LOAN GUARANTEE PROGRAM

Pub. L. 106-69, title III, §337, Oct. 9, 1999, 113 Stat. 1022, which provided that none of the funds in Pub. L. 106-69 were to be available for activities under the Aircraft Purchase Loan Guarantee Program during fiscal year 2000, was from the Department of Transportation

and Related Agencies Appropriations Act, 2000, and was not repeated in subsequent appropriations acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105-277, div. A, §101(g) [title I], Oct. 21, 1998, 112 Stat. 2681-439, 2681-446.

Pub. L. 105-66, title I, Oct. 27, 1997, 111 Stat. 1431.

Pub. L. 104-205, title I, Sept. 30, 1996, 110 Stat. 2957.

Pub. L. 104-50, title I, Nov. 15, 1995, 109 Stat. 442.

Pub. L. 103-331, title I, Sept. 30, 1994, 108 Stat. 2476.

Pub. L. 103-122, title I, Oct. 27, 1993, 107 Stat. 1205.

Pub. L. 102-388, title I, Oct. 6, 1992, 106 Stat. 1527.

Pub. L. 102-143, title I, Oct. 28, 1991, 105 Stat. 924.

Pub. L. 101-516, title I, Nov. 5, 1990, 104 Stat. 2161.

Pub. L. 101-164, title I, Nov. 21, 1989, 103 Stat. 1076.

Pub. L. 100-457, title I, Sept. 30, 1988, 102 Stat. 2131.

Pub. L. 100-202, §101(l) [title I], Dec. 22, 1987, 101 Stat. 1329-358, 1329-363.

Pub. L. 99-500, §101(l) [H.R. 5205, title I], Oct. 18, 1986, 100 Stat. 1783-308, and Pub. L. 99-591, §101(l) [H.R. 5205, title I], Oct. 30, 1986, 100 Stat. 3341-308.

Pub. L. 99-190, §101(e) [title I], Dec. 19, 1985, 99 Stat. 1267, 1273.

Pub. L. 98-473, title I, §3101(i) [title I], Oct. 12, 1984, 98 Stat. 1944, 1950.

Pub. L. 98-78, title I, Aug. 15, 1983, 97 Stat. 458.

Pub. L. 98-63, title I, July 30, 1983, 97 Stat. 339.

§ 40114. Reports and records

(a) WRITTEN REPORTS.—(1) Except as provided in this part, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) shall make a written report of each proceeding and investigation under this part in which a formal hearing was held and shall provide a copy to each party to the proceeding or investigation. The report shall include the decision, conclusions, order, and requirements of the Secretary or Administrator as appropriate.

(2) The Secretary (or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) shall have all reports, orders, decisions, and regulations the Secretary or Administrator, as appropriate, issues or prescribes published in the form and way best adapted for public use. A publication of the Secretary or Administrator is competent evidence of its contents.

(b) PUBLIC RECORDS.—Except as provided in subpart II of this part, copies of tariffs and arrangements filed with the Secretary under subpart II, and the statistics, tables, and figures contained in reports made to the Secretary under subpart II, are public records. The Secretary is the custodian of those records. A public record, or a copy or extract of it, certified by the Secretary under the seal of the Department of Transportation is competent evidence in an investigation by the Secretary and in a judicial proceeding.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1110.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40114(a)(1) ..	49 App.:1324(d) (1st, 2d sentences). 49 App.:1354(b) (1st, 2d sentences).	Aug. 23, 1958, Pub. L. 85-726, §§204(d), 313(b), 1103, 72 Stat. 743, 753, 797.